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Pac. 162, 163. "Trade" has usually, however, been more broadly defined as buying and selling, or any dealing by way of sale or exchange. See *May* v. *Sloan*, 101 U. S. 231, 237; *Doe* v. *Bird*, 2 A. & E. 161, 166. See also 3 BOUV. L. DICT. 3290. This definition has been held to apply to a single transaction. *United States* v. *Douglas*, 190 Fed. 482. There seems to be nothing in the act to show that Congress intended the narrower interpretation, especially in view of the fact that by a later statute, such losses may be deducted under a provision permitting deduction for all losses incurred in "any transaction entered into for profit." See 40 STAT. AT L. 1067.

TAXATION — PARTICULAR FORMS OF TAXATION — TRANSFER TAX: TRANSFER TO CHILDREN UNDER ANTENUPTIAL AGREEMENT. — A and B made an antenuptial agreement whereby, on the death of either, leaving issue, said issue were to take one third of the community property. A died. His children claim that the transfer to them under the agreement is not taxable under the New York Taxable Transfers Act. (1909 NEW YORK LAWS, c. 62; CONSOL. LAWS, c. 60, Art. 10.) *Held*, that the transfer is not taxable. *Matter of Schmoll*, 191 App. Div. 435, 181 N. Y. Supp. 542.

For a discussion of the principles involved in this case, see NOTES, p. 198, *supra*.

BOOK REVIEWS

PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY. By Various Authors. Continental Legal History Series, Vol. XI. Boston: Little, Brown, and Company. 1918.

For American purposes this is the most useful volume in a useful series. In the first two chapters (by Alvarez) the philosophical ideas which underlay our American Bills of Rights, as well as the French legislation of 1804, and the later modes of thought which characterized the maturity of law in the nineteenth century both in Europe and in America, are set forth clearly in convenient form. The thoughtful reader who can apply to the text his own knowledge of nineteenth-century American law will find much to aid him in understanding our law as it was a generation ago. Also he will find much material for reflection in such phenomena as the text of the French Civil Code of 1804 making liability a corollary of fault and the rise of liability without fault in recent years (pp. 58–61).

Chapter 3, "Changes of Principle in the Field of Liberty, Contract, Liability and Property," translated from Duguit's *Transformations du droit privé depuis le code Napoléon*, is a book in itself and deserves the most careful reading by American lawyers. The belief of lawyers in the first half of the last century "that law was an exact system, commanding adherence with the same rigor and unassailable logic as a system of geometry" (67), the breakdown of the word "right" as a legal conception (70), the functional idea of duty (73), the rise of legal limitations upon individual activity imposed in the interest of the individual (80), — all these things are as manifest and as significant in our law as in French law. In the last century there was a persistent attempt to force the common law of contracts into a Romanist mold, to state common-law relational doctrines in terms of "implied contract," to make tort liability depend upon culpability, in short to make the individual will the central point in our legal theory. Partly this resulted from a natural turning to the civilians for systematic ideas in view of the poverty of our law in this respect. Even more

it grew out of the modes of thought which governed everywhere in nineteenth-century science of law. Duguit's argument that the will-conception of a legal transaction "no longer agrees in the least with the facts" (89), his discussion of the duties of a public service company (120 ff.), and his exposition of the "new conception of liability for an injurious act" (125 ff.), are of great value for us. For he shows that this interpretation of everything in terms of the individual will, which our law has resisted and our courts have had to abandon, is breaking down at home. Again, the legal questions of which he treats under the head of "property as a social function" (129 ff.) are quite as important with us as in twentieth-century France. The distinction between socialization of property, which is becoming a fact, and collective ownership, which is but a creed (129), the legal theory of property in terms of economic need (130), the demonstration that "the individualistic system of property law is disappearing" (132), and the point that this does not mean disappearance of private ownership as an economic institution, but "that the legal notion upon which protection of property is founded is being modified" (134), may be verified out of our law by the same methods which he applies to French law. This chapter, written in the best style of a great thinker, is a notable contribution to the science of law and could properly have found a place in the series on Philosophy of Law.

Charmont's chapter on "Changes of Principle in the Field of Family, Inheritance and Persons" (chap. 4) deals with a subject in which we have been more conscious of change and has less interest for us. French attempts to adopt American homestead legislation (162 ff.) suggest how futile these borrowings of exotic institutions are likely to prove. Also the movement for "restoration of paternal testamentary power" (184 ff.) should give pause to those who would introduce the "reserve" or some equivalent institution with us. Another matter of interest is the effect of stock companies upon the French family (169 ff.).

Five succeeding chapters (5–9) treat of the method and influence of the modern codes historically and comparatively. They contain little or nothing that is not well known, but chap. 9 (by Rocco) on the commercial codes gives the first good account in English of the work of Thöl and Goldschmidt in the system and history of commercial law. The remaining chapters treat of the "Movement for the International Assimilation of Law," which excited much interest among scholars in the past twenty-five years. As things are, the subject is somewhat academic. But the thoughtful and eloquent address of Dean Wigmore with which the volume closes deserves to be pondered in connection with inevitable movements for unification of law in the United States, if not for the promotion or restoration of unity of law among English-speaking peoples.

A few doubtful translations, *e. g.*, "gross failure of consideration" for *lésion* (p. 14), do not seriously detract from the value of the book.

R. P.

JURISPRUDENCE. By Sir John [William] Salmond. Sixth Edition. London: Sweet and Maxwell, Limited. 1920. pp. xv, 512.

The practice of issuing reprints of a standard work with minor changes under the guise of new editions leads inevitably to a point where it becomes obvious that the book speaks from the date of the original publication and not from the date of the *imprimatur*. With the sixth edition Salmond's book on *Jurisprudence* has reached that point. When the first edition appeared in 1902 it was easily the best general introduction to the subject in the English language. Even then what was original in it was not new, as the author was rather restating in rounded form what he had worked out in his *Essays in Jurisprudence*